

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2019

CORAM:

THE HONOURABLE DR. JUSTICE S.VIMALA

W.P.No.33309 of 2018

and

W.M.P.Nos.38652 & 38653 of 2018

A.Krishnamoorthy

.. Petitioner

Vs.

1. The Principal Secretary to Government,
Home Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Director General of Police,
Mylapore, Chennai - 600 004.
3. The Superintendent of Police,
Dindigul, Dindigul District. ... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records of the 1st respondent in G.O.(D). No.1103 dated 11.11.2016 and quash the same as null and void and consequently, direct the 3rd respondent to reinstate the petitioner in service with back wages and all attendant benefits.

For Petitioner : M/s.G.Saravanan

For Respondents : Mr.A.N.Thambidurai
Special Government Pleader

ORDER

The Writ Petition has been filed seeking direction to the respondents to consider the case of the petitioner, after quashing the order dated 11.11.2016.

2. The brief facts which would be necessary to consider the case are as under :-

The Principal Secretary to Government in G.O.(D) No.1103 Home (Police VI) Department dated 11.11.2016, dismissed the petition filed by the petitioner. The petition seeking mercy has also been rejected. The punishment of removal from service imposed on the petitioner was sought to be reconsidered in the representation but that was not accepted by the Government. Seeking to quash the order dated 11.11.2016, this writ petition has been filed.

3. The petitioner was appointed as Grade II Constable on 16.03.1994. By the proceedings of the 3rd respondent dated 28.04.2010, the absence of the petitioner for duty, from 04.04.2010 to 24.04.2010 has been treated as desertion of duty. He was directed to appear before the District Superintendent of Police on or before 02.06.2010. It appears that enquiry was conducted and thereafter he was dismissed from service. In the representation dated 05.09.2012, the petitioner has stated that he was suffering from ill-health and he was on treatment by taking native treatment. He has also stated that he has to support his mother, wife as well as three children. What is omitted to be stated in the representation is that the ill-health of the petitioner was on account of the three death continuously happened in the family of the petitioner. The death certificates of his father, sister and uncle have been enclosed in the typeset of papers. The petitioner's father A. Azhagu Devar died on 01.12.2009. The date of death of the petitioner's uncle Chinna Devar is 13.12.2009 and his sister is 01.01.2010. The continuous death in the family, which is supported by the death certificates, ought to have been mentioned in the representation. Nowhere in the representation these facts are placed before the authorities concerned. Perhaps had it been placed in the representation, the authorities concerned would have considered the critical position of the petitioner. The petitioner who is employed in a disciplined force, discharging public utility service should not have been negligent and should have informed his absence and sought permission. That has not been done. However, it does not justify the punishment of dismissal of the petitioner from service, which is excessive. Any other punishment less than dismissal of service could have been imposed.

4. From the facts and circumstances, this Court is of the view that the impugned order of dismissal from service, against the petitioner has to be set aside and it is set aside accordingly. The 3rd respondent is directed to consider the case of the petitioner in the light of the three death happened in the family, during the year 2009-2010 and pass appropriate orders, having regard to the empathy, within a period of four weeks from the date of receipt of a copy of this order.

5. Accordingly, this Writ Petition is allowed. Consequently, connected miscellaneous petitions are closed. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

asi/avr

To

1. The Principal Secretary to Government,
Home Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Director General of Police,
Mylapore, Chennai - 600 004.
3. The Superintendent of Police,
Dindigul, Dindigul District.

+2 ccs to Mr.G.Saravanan, Advocate, S.R.No.404

+1 cc to the Government Pleader, S.R.No.995

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SV(CO)
SSM(19/02/2019)

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